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FILED
Clerk
District Court

SEP - 5 2012

for the Northern Mariana Islands
By _____
(Deputy Clerk)

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN MARIANA ISLANDS**

12 **ROGELIO R. CADA,**

13 **Plaintiff,**

14 **-v-**

15 **HANWHA RESORT & HOTEL dba**
16 **SAIPAN WORLD RESORT, JONG**
17 **TAE PARK, MIRRIAM K. SEMAN,**
18 **HA SEUNG WOO, JUN HAM, and**
19 **SATURNINO BANTING,**

20 **Defendants.**

Civil Action No. 12-_____

CV 12-0023

COMPLAINT

21 **I**
22 **NATURE OF THE ACTION**

23 1. This is an action under Title VII of the Civil Rights Act of 1964 (Title
24 VII), 42 U.S.C. §§ 2000e to 2003-17 and under the Age Discrimination in
25 Employment Act (ADEA), §§ 621, et. seq. for Defendants' unlawful, discriminatory
and retaliatory employment practices towards Plaintiff in violation of Plaintiff's

1 federally-protected rights, and for actions in tort and contract under applicable
2 Commonwealth of the Northern Mariana Islands (CNMI) law.

3 2. Plaintiff complains about employment discrimination based on age and
4 other impermissible grounds described in this Complaint, including, but not limited
5 to: (a) discriminatory policies, practices, and/or procedures in firing, layoffs,
6 compensation, benefits, discipline, job assignments and employment benefits; (b)
7 unlawful retaliatory actions; (c) constructive discharge; (d) hostile work environment;
8 (e) breach of contract; and (f) breach of implied covenant of good faith and fair
9 dealing.
10

11
12 3. This is also an action under the whistleblower provisions of Section
13 11(c) the Occupational Safety and Health Act, 29 U.S.C. § 660(c) against Defendants
14 for unlawful retaliatory practices against Plaintiff.
15

16 4. Plaintiff is seeking declaratory relief, punitive, expectation, incidental,
17 and consequential damages, costs, and attorney's fees to redress Defendants' unlawful
18 discriminatory and retaliatory employment policies, practices, and/or procedures and
19 related Commonwealth-law claims.
20

21
22 **II**
 JURISDICTION AND VENUE

23 5. Title VII of Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et. seq.*, as
24 amended (Title VII) and the Age Discrimination in Employment Act of 1967
25 (ADEA), 29 U.S.C. §§ 621, *et. seq.*, as amended, apply to this matter through the

1 employment practices alleged herein pursuant to 42 U.S.C. § 2000e-5(e)(1) and 29
2 U.S.C. § 626(d)(1).

3 11. On or about June 6, 2012, the EEOC issued to Plaintiff a Notice of
4 Right to Sue. Plaintiff is filing this complaint within ninety (90) days after the date on
5 which he received the Notice of Right to Sue in compliance with 42 U.S.C. § 2000e-
6 5(f)(1) and 29 U.S.C. § 626(e). Attached as **Exhibit "1"** and incorporated by
7 reference is a copy of the Notice of Right to Sue dated June 6, 2012.
8

9 12. Consequently, all jurisdictional prerequisites to the institution of this
10 lawsuit have been fulfilled, and Plaintiff has exhausted his administrative remedies as
11 required by law.
12

13 IV 14 PARTIES

15 13. Plaintiff **ROGELIO R. CADA** is a citizen of the Republic of the
16 Philippines who resides, and at all relevant times, resided in Saipan, Commonwealth
17 of the Northern Mariana Islands (CNMI). Plaintiff, at all relevant times, was an
18 employee of Defendant, within the meaning of 42 U.S.C. § 2000.e(f) and 29 U.S.C. §
19 630(f).

20 14. Plaintiff, at all relevant times, was an individual of at least 40 years of age
21 and is an employee covered by ADEA within the meaning of 29 U.S.C. § 631.

22 15. Defendant **HANWHA RESORT & HOTEL dba SAIPAN**
23 **WORLD RESORT** ("WORLD RESORT), on information and belief, is, and all
24 relevant times, was a corporation organized and existing under the laws of the CNMI
25

1 having its principal place of business on Saipan, CNMI, and was an employer of
2 Plaintiff as defined under 42 U.S.C. § 2000e(f) and 29 U.S.C. § 630(b).

3
4 16. Defendant **JONG TAE PARK** (PARK) is, and at all relevant times, was
5 the general manager of Defendant WORLD RESORT.

6 17. Defendant **MIRRIAM K. SEMAN** (SEMAN) is, and at all relevant
7 times, was the human resources manager of Defendant WORLD RESORT.

8 18. Defendant **HA SEUNG WOO** (WOO) is, and at all relevant times, was
9 the maintenance manager of Defendant WORLD RESORT.
10

11 19. Defendant **MICHAEL KIM** (KIM) is, and at all relevant times, was the
12 operations manager of Defendant WORLD RESORT.

13 20. Defendant **JUN HAM** (HAM) is, and at all relevant times, was a
14 manager of Defendant WORLD RESORT.
15

16 21. Defendant **SATURNINO BANTING** (BANTING) is, and at all
17 relevant times, was the maintenance supervisor of Defendant WORLD RESORT.

18 22. At all relevant times, Defendants PARK, SEMAN, WOO, KIM, NAM,
19 and BANTING are managers and agents of WORLD RESORT acting within the
20 course and scope of that relationship in the decision making and responsibility for,
21 and establishment of practices or policies for WORLD RESORT which resulted in
22 the unlawful discriminatory and retaliatory employment practices alleged herein.
23
24
25

V
STATEMENT OF FACTS

23. Plaintiff, at all relevant times, was a 77-years old Filipino foreign national worker who was originally employed by WORLD RESORT as a construction superintendent beginning sometime in November, 2003, and remained so employed until his discharge on October 28, 2011.

24. On April 15, 2004, WORLD RESORT appointed Plaintiff to be its Safety and Health Officer and specifically tasked Plaintiff to be “responsible for strictly implementing the Safety and Health Program” administered by the Occupational Safety and Health Administration (OSHA).

25. At all relevant times, Plaintiff performed all duties assigned to him in a professionally competent manner, faithfully followed all reasonable instructions given to him by his managers and supervisors, and abided by all the rules and regulations of WORLD RESORT.

26. On October 15, 2010, as part of his responsibilities as Safety and Health Officer of WORLD RESORT, Plaintiff wrote a letter to CNMI-OSHA Consultation Program Director, Mr. Ray Guererro, requesting OSHA to revisit and inspect WORLD RESORT’s safety and health program to ensure that that it conforms with OSHA standards and make it more specific and applicable to its present business operations and acceptable to OSHA Compliance Officers.

1 27. When Plaintiff made the request to OSHA, he, as Safety and Health
2 Officer, has some issues and concerns as to whether the safety and health program of
3 WORLD RESORT is in compliance with OSHA safety and health standard.
4

5 28. Plaintiff made sure that the managers of WORLD RESORT were aware
6 of his request to OSHA by providing copies of his letter to OSHA the following
7 managers: Jong Tae Park (General Manager); Michael Kim (Operations Manager);
8 Mirriam K. Seman (Human Resources Manager); and Woo Ha Seung (Maintenance
9 Manager).
10

11 29. Plaintiff has since been subjected to successive adverse employment
12 actions by WORLD RESORT's supervisors and managers as Plaintiff was subjected
13 to a pattern of continuing work place harassments and was given new hard work
14 assignments that Plaintiff has not previously been asked to perform since he started
15 working for the company and which tasks are too stressful considering his advanced
16 age.

17 30. To begin with, on or about February 21, 2011, Plaintiff received a
18 Memorandum from Defendant SEMAN. In her Memorandum, Ms. SEMAN
19 reprimanded Plaintiff "in regards to [Plaintiff's] letter to OSHA soliciting consultative
20 assistance for Safety and Health Program."
21

22 31. Ms. SEMAN issued to Plaintiff the warning because of Plaintiff's
23 purported failure to inform the department team manager of his intention to write the
24 OSHA.
25

1 32. Plaintiff was surprised of Ms. SEMAN's action because Plaintiff in
2 requesting for OSHA visit was only performing his assigned duties as Safety and
3 Health Officer to make sure that WORLD RESORT complies with the standards
4 required by OSHA law and regulations. Besides, key managers and officials of
5 WORLD RESORT were provided copies of Plaintiff's letter to OSHA.
6

7 33. On June 2, 2011, Defendant WOO issued to Plaintiff another
8 Memorandum "Re: Work Assignment" assigning Plaintiff to the General Repair
9 Section in the Guest Room Maintenance.
10

11 34. Plaintiff was tasked by Mr. WOO to do "repairing, painting, among
12 other duties" which Plaintiff has not previously performed or previously been tasked
13 to perform.
14

15 35. Plaintiff approached Mr. WOO and inquired with him why Plaintiff was
16 suddenly been given hard work assignments, while at the same time complaining that
17 those work assignments are not appropriate to his advanced age.
18

19 36. Plaintiff requested Mr. WOO for a reasonable accommodations on
20 account of his advanced age, by requesting Mr. WOO that he be not assigned to those
21 hard jobs that are more appropriate to younger workers and that he be given
22 alternative work assignments that suitable to Plaintiff's age.
23

24 37. Mr. WOO, however, refused and insisted that Plaintiff performs
25 whatever duties that he would be assigned to perform.

1 38. On June 9, 2011, Defendant BANTING issued to Plaintiff another
2 Memorandum "Re: Warning Insubordination." Mr. BANTING accused Plaintiff of
3 refusing to follow his order to assist one of the company's painters.
4

5 39. There is no truth to Mr. BANTING's accusation because Plaintiff
6 assisted the company painters. Nonetheless, Plaintiff politely requested Mr.
7 BANTING that he be given reasonable work accommodations by giving him lighter
8 work assignments because of his age because Plaintiff find it extreme difficult to
9 perform those new work assignments due to his advanced age.
10

11 40. At that time, Plaintiff was aware that there are other younger workers
12 who are available to perform those tasks being re-assigned and transferred to him.

13 41. Mr. BANTING, like Mr. Woo, insisted that Plaintiff performs whatever
14 duties assigned to him.
15

16 42. On June 9, 2011, Plaintiff wrote a letter to the company explaining his
17 side regarding what Mr. BANTING stated in his June 9, 2011 memorandum.

18 43. In his letter, Plaintiff explained to management that "[Mr. Banting] has
19 been assigning duties to [Plaintiff] that [Plaintiff] cannot handle, such as painting and
20 gardening" because of his age.
21

22 44. Plaintiff also explained to management that his contracted job has always
23 been to be the safety officer of the company and that his daily duties consist of
24 monitoring and protecting workers from various hazards in the hotel.
25

1 45. Plaintiff reiterated to management that he “deserves to be treated with
2 respect, as an elder.”

3 46. On June 21, 2011, Plaintiff wrote another letter to Defendant SEMAN,
4 complaining against the continuing hostile treatment that Plaintiff is being subjected
5 to in the hands of WORLD RESORT’s managers and supervisors.

6 47. Plaintiff specifically complained to Ms. SEMAN about various forms of
7 harassments in workplace that he has been suffering, including stripping him of his
8 former duties as safety officer and assigning him hard work assignments and the
9 manner with which his old functions were being transferred to younger workers
10 which made Plaintiff appear useless, incapable, helpless and miserable.

11 48. Plaintiff also complained to Ms. SEMAN about his continuing
12 assignment to hard work assignments that are not appropriate to his advanced age and
13 the WORLD RESORT’s continuous refusal to grant his reasonable requests for
14 lighter work assignments that are appropriate to his age.

15 49. On information and belief, other available lighter work assignments,
16 including those previously being performed by Plaintiff were transferred and assigned
17 to Plaintiff’s younger co-workers.

18 50. On July 1, 2011, a meeting was conducted purportedly to address the
19 concerns Plaintiff had raised in his June 21, 2011 letter to Ms. SEMAN. The meeting
20 was attended by Defendants PARK, WOO, SEMAN, HAM and Plaintiff.

1 51. At the meeting, Plaintiff complained to the managers of WORLD
2 RESORT present about the work harassments that he has been subjected to by
3 WORLD RESORT's managers and supervisor and the work assignments given him
4 that are noticeably becoming harder and harder, while at the same time, favoring
5 Plaintiff's younger co-workers with lighter work assignments.
6

7 52. The meeting was a fruitless endeavor. Even after the meeting, Plaintiff
8 was continuously subjected to work-place harassments and continuously given even
9 harder work assignments that are not suitable to his advanced age.
10

11 53. On September 5, 2011, Defendant SEMAN served Plaintiff with
12 another memorandum placing him under suspension for 7 working days without pay
13 beginning on September 7, 2011 until September 15, 2011.
14

15 54. When Plaintiff reported back for work on September 15, 2011, another
16 memorandum was served by Defendant BANTING giving Plaintiff new and harder
17 work assignments that include "painting of old safety cones at the jungle stage",
18 "painting of safety signage" and "installation of letters on the signage."
19

20 55. Plaintiff politely reminded Mr. BANTING that those were not Plaintiff's
21 duties, but must instead be assigned to the general repairs section of the maintenance
22 department.
23

24 56. On September 26, 2011, Plaintiff, as safety officer, reported at the
25 worksite ahead of schedule so he can brief the security officers on duty about the

1 details of the operation and the workers about the proper use of electric operated
2 lifter, fall protection equipments and how to maintain safety on the ground.

3 57. After briefing the workers, Plaintiff left the job site, and after a very
4 short walkthrough safety inspections in other areas of the hotel, came back to the
5 jobsite.

6 58. When he came back, Plaintiff saw Mr. BANTING talking to one of the
7 managers who he called to report Plaintiff's brief absence at the jobsite.

8 59. After a few minutes, another director came and joined the manager and
9 Mr. BANTING in confronting Plaintiff.

10 60. At one point during their conversation, Mr. BANTING, who is several
11 years younger than Plaintiff, and in the presence of the director and manager, without
12 any cause or provocation on Plaintiff's part, and in a malicious, willful, rude, violent,
13 threatening and insolent manner, suddenly yelled at, menaced and intimidated
14 Plaintiff, while shouting that Plaintiff was not following his order.

15 61. At that time, Mr. BANTING, who was visibly angry at Plaintiff, was
16 closed to attacking Plaintiff, but was just timely prevented by the two officials from
17 attacking him.

18 62. At that juncture, Plaintiff overheard the director ordering the manager
19 present to report the incident to the Human Resources Department immediately.

20 63. After the September 26, 2011 incident, Plaintiff received more
21 memoranda from Mr. BANTING.

1 64. On October 4, 2011, Plaintiff received a work assignment memorandum
2 from Mr. BANTING, tasking Plaintiff to assist two other workers in periodic
3 maintenance.

4
5 65. On October 7, 2011, Mr. BANTING issued another work assignment
6 memorandum to Plaintiff, this time assigning him to, among others, “pick-up dry
7 leaves, cigarette butts around the water park and the hotel’s surroundings.”

8
9 66. On October 12, 2011, Mr. BANTING issued another memorandum
10 which was very rude and full of disrespect to an old man like Plaintiff. In that same
11 memorandum, Mr. Banting gave Plaintiff a new work assignment – this time to “assist
12 in the garbage disposal.”

13
14 67. All of the work memoranda issued by Mr. BANTING bears the
15 signature and approval of Defendant WOO.

16
17 68. On October 18, 2011, Plaintiff filed a discrimination complaint against
18 Defendant with the EEOC.

19
20 69. On October 24, 2011, upon checking his office desk at the maintenance
21 department, Plaintiff discovered that his office desk is gone and been moved
22 elsewhere and the computer that he was using taken.

23
24 70. Plaintiff sought an explanation from both Defendants WOO and
25 BANTING, but the two just ignored Plaintiff.

 71. On October 25, 2011, Defendant SEMAN called for a meeting to
discuss possibilities of Plaintiff’s employment being renewed.

1 72. At the meeting, which was also attended by Defendant HAM,
2 management informed Plaintiff that the company has decided to revise Plaintiff's
3 employment contract to make him officially a "Maintenance Repairer" because they
4 would purportedly eliminate his previous position of safety officer.
5

6 73. As "Maintenance Repairer", Plaintiff would have been tasked to render
7 an extremely long list of numerous new duties and responsibilities all of them
8 involving difficult tasks which Plaintiff which were not suitable to Plaintiff's advanced
9 age.
10

11 74. Plaintiff believes that his new duties for the offered position of
12 Maintenance Repairer were deliberately made numerous and difficult by the
13 management in order to force him to voluntarily resign.
14

15 75. Furthermore, the excuse given by Defendants were pretextual because
16 Plaintiff is informed and believes and thereon alleges that his old functions as safety
17 officer were just transferred to a younger employee.
18

19 76. Plaintiff made it known to management during the October 25, 2011
20 meeting that it would be very difficult for him to perform that exceptionally long list
21 of duties and responsibilities because of his age.
22

23 77. Management told Plaintiff that the only way for Plaintiff to be able to
24 continue his employment with WORLD RESORT is for Plaintiff to accept that long
25 list of new duties and responsibilities and his designation as Maintenance Repairer
which Plaintiff considers as a demotion.

1 78. Mr. Ham warned Plaintiff that if he accepts the designation of
2 Maintenance Repairer, he should be ready to perform that long list of new duties and
3 responsibilities. On the other hand, if Plaintiff refuses, Plaintiff can just simply leave
4 the company.
5

6 79. Plaintiff politely asked the managers present that he be provided with
7 the minutes of the meeting.
8

9 80. Mr. Ham refused and told Plaintiff that he can just leave the company.
10

11 81. On October 28, 2011, Plaintiff was allowed by management to retrieve
12 his things from the maintenance department where he used to hold office, while all
13 the while being escorted and watched upon by Defendant SEMAN.
14

15 82. The above unlawful discriminatory and retaliatory practices committed
16 by WORLD RESORT deprived Plaintiff of equal employment opportunities and
17 affected his status as an employee, first because it was in retaliation of his initiating
18 contact with OSHA concerning safety and health standards in Plaintiff's work place, a
19 duty required of Plaintiff by law to perform as a safety officer and also because of
20 persistent complaining about the work assignments being given him that has
21 increasingly becoming more and more onerous and difficult.
22

23 83. WORLD RESORT's discriminatory and retaliatory acts also violated his
24 federally protected rights under the Age Discrimination in Employment Act (ADEA),
25 §§ 621, et. seq. both for its failure to extend reasonable accommodations to Plaintiff's

1 reasonable request for lighter work assignments on account of Plaintiff's age and its
2 continuous delegation of Plaintiff's duties as safety officer to younger workers.

3
4 **VI**
CAUSES OF ACTION

5 **First Cause of Action**
6 **(Age Discrimination)**

7 84. Paragraphs 1 through 83 above are incorporated herein by reference as if
8 fully pleaded in this First Cause of Action.

9 85. The discriminatory and retaliatory acts alleged above, including, but not
10 limited to the continuing given of difficult works assignments to Plaintiff despite his
11 advanced age and despite the availability of younger workers to perform those tasks;
12 the transfer of Plaintiff's previous work duties to younger workers; the continuous
13 failure of Defendants to accommodate to Plaintiff's request for reasonable
14 accommodation to give him lighter work duties on account of his age, constitute
15 unlawful employment practices under 29 U.S.C. § 623(a).
16
17

18 86. Defendants' discriminatory employment practices as alleged above
19 deprived Plaintiff of equal employment opportunities or otherwise affected his status
20 as an employee because of his age.
21

22 87. Defendants engaged in the above-described conducts against Plaintiff
23 with malice and in reckless disregard of Plaintiff's federally-protected rights thereby
24 entitling Plaintiff to punitive damages in an amount to be determined at trial.
25

Second Cause of Action
(Constructive Discharge)

88. Paragraphs 1 through 87 above are incorporated herein by reference as if fully pleaded in this Second Cause of Action.

89. At all times, during his employment with WORLD RESORT, Plaintiff performed his duties with utmost diligence and competence.

90. Plaintiff is informed and believes and thereon alleges that WORLD RESORT's decision to harass and discriminate against Plaintiff, as alleged herein was motivated by Plaintiff's age, his frequent complaining about his disparate treatment on work assignments on account of age; his persistent request for reasonable accommodation on work assignments on account of age; and his action in attempting to bring the hotel's safety and health system in compliance with OSHA standard, are but part of a pattern to create a work environment that would be very difficult for Plaintiff to bear.

91. Furthermore, Plaintiff is informed and believes and thereon alleges that its imposition of the long list of duties for the new position of Maintenance Repairer that was offered to Plaintiff prior to his discharge in October 2011 was calculated to render it difficult for Plaintiff to accept the position of Maintenance Repairer on account of his age and thereupon for Plaintiff to voluntarily refuse to accept the new position.

1 92. Plaintiff is informed and believes and thereon alleges that any other
2 reasons offered by WORLD RESORT were and are pretextual in nature. Defendant
3 intentionally created the aforementioned discrimination, harassment and retaliation,
4 and imposition of onerous duties and responsibilities thereby creating working
5 conditions so intolerable that Plaintiff had no alternative but not to accept the offered
6 position of Maintenance Repairer.
7

8 93. As a direct and proximate result of the aforesaid conduct of Defendant's
9 managers and supervisor, Plaintiff has been deprived of his right to a work
10 environment free from discrimination, harassment, and retaliation.
11

12 94. Defendants' discriminatory employment practices as alleged above
13 deprived Plaintiff of equal employment opportunities or otherwise affected his status
14 as an employee because of his age.
15

16 95. Defendants engaged in the above-described conducts against Plaintiff
17 with malice and in reckless disregard of Plaintiff's federally-protected rights thereby
18 entitling Plaintiff to punitive damages in an amount to be determined at trial.
19

20 96. Furthermore, because the acts taken towards Plaintiff were carried out
21 by managerial and supervisory employees acting in a despicable, deliberate, cold,
22 callous, and intentional manner in order to injure and damage Plaintiff, Plaintiff is
23 entitled to recover punitive damages from each of them individually in an amount to
24 be determined at trial.
25

Third Cause of Action
(Retaliatory Discharge)

97. Paragraphs 1 through 96 above are incorporated herein by reference as if fully pleaded in this Third Cause of Action.

98. Plaintiff engaged in protected activity in that he had filed an Equal Employment Opportunity Complaint against Defendant WORLD RESORT.

99. At the time of Plaintiff's constructive discharge sometime in October 2011, Defendants were fully aware of Plaintiff's EEO Complaint.

100. Defendant WORLD RESORT illegally retaliated against Plaintiff by continuously subjecting him to harassments and giving him new work assignments and ultimately by constructively terminating his employment, because of the protected activity which Plaintiff had engaged in.

101. There were no legitimate non-discriminatory reasons for the actions taken by Defendants.

102. As a result of Defendants' willful, knowing and intentional discrimination and retaliation, Plaintiff has suffered and will continue to suffer pain, humiliation and emotional distress. Plaintiff is thereby entitled to compensatory damages in an amount to be determined at trial.

103. Furthermore, Defendants engaged in the above-described retaliatory conducts against Plaintiff with malice and in reckless disregard of Plaintiff's federally-

1 protected rights thereby entitling Plaintiff to punitive damages in an amount to be
2 determined at trial.

3
4 **Fourth Cause of Action**
(Hostile Work Environment)

5 104. Paragraphs 1 through 103 above are incorporated herein by reference as
6 if fully pleaded in this Fourth Cause of Action.

7
8 105. Defendant WORLD RESORT, through Defendants SEMAN, WOO,
9 and BANTING, persistently and intentionally carried out actions and followed
10 policies and/or customs which did not have no other legitimate purpose, other than
11 to harass Plaintiff.

12
13 106. The acts and misconduct of Ms. Seman, Mr. Banting and Mr. Woo
14 were conducted routinely and persistently without any correction or discipline from
15 WORLD RESORT.

16
17 107. The hostile work environment was pervasive, demeaning and was
18 sufficient to change the terms of Plaintiff's employment. WORLD RESORT took no
19 corrective action against the misconducts of its managers and supervisors during
20 Plaintiff's tenure with the company.

21
22 108. The harassments and misconducts were sufficiently severe and pervasive
23 to unreasonably interfere with Plaintiff's physical and emotional well-being and
24 created an intimidating, hostile and offensive working environment. WORLD
25 RESORT took no corrective action during Plaintiff's tenure with the company.

1 109. WORLD RESORT was aware of the harassments and misconducts of
2 its managers and supervisor toward Plaintiff, the pervasive hostile work environment
3 and acquiesced in this discriminatory unlawful misconduct.
4

5 110. As a direct and proximate result of the harassments and hostile work
6 environment that he endured, Plaintiff suffered great embarrassment, humiliation,
7 mental anguish and physical harm.

8 111. The above-described conducts against Plaintiff were committed willfully
9 and malicious and in reckless disregard of Plaintiff's rights thereby entitling Plaintiff to
10 punitive and compensatory damages in an amount to be determined at trial.
11

12 **Fifth Cause of Action**
13 **(Retaliation Against Whistleblower under Section 11(c) of**
14 **Occupational Safety and Health Act, 29 U.S.C. § 660(c))**

15 112. Paragraphs 1 through 111 above are incorporated herein by reference as
16 if fully pleaded in this Fifth Cause of Action.

17 113. At the time Plaintiff made the request to OSHA on October 21, 2010 to
18 revisit the safety and health program of WORLD RESORT, Plaintiff, as Safety and
19 Health Officer, has some issues and concerns whether the safety and health program
20 of WORLD RESORT was in compliance with OSHA safety and health standard as
21 required by law.
22

23 114. When Plaintiff made the request to OSHA, he was an employee of
24 WORLD RESORT.
25

1 115. At the time Plaintiff made the request to OSHA, he was engaged in
2 protected activity in that he was both raising OSHA compliance issues with the
3 management of WORLD RESORT and by raising compliance concerns with OSHA
4 which might reasonably be effective at commencing enforcement proceedings.
5

6 116. At all relevant times, Defendants knew that Plaintiff was engaged in
7 protected activity or suspected Plaintiff of engaging in protected activity.
8

9 117. Defendants have discriminated against Plaintiff and maintained a hostile
10 work environment for Plaintiff on account of protected activities. Such hostility,
11 discriminations and retaliation includes, but is not limited to, imposing discipline on
12 Plaintiff; subjecting Plaintiff to hostile interrogation; relieving Plaintiff of duties; close
13 surveillance of Plaintiff; revoking Plaintiff's access to company facilities; damaging
14 Plaintiff's reputation and future employment opportunities; and discharging Plaintiff
15 sometime in October 2011.
16

17 118. Defendants maintained a hostile work environment for Plaintiff and
18 otherwise discriminated against complainant on account of protected activities.
19

20 119. As a result of Defendants' willful, knowing and intentional
21 discrimination and retaliation, Plaintiff has suffered loss of benefits, mental anguish,
22 and loss of advance of opportunities and suffered pain, humiliation and emotional
23 distress. Plaintiff is thereby entitled to compensatory damages in an amount to be
24 determined at trial.
25

1 120. Furthermore, Defendants engaged in the above-described discriminatory
2 and retaliatory conducts against Plaintiff with malice and in reckless disregard of
3 Plaintiff's federally-protected rights thereby entitling Plaintiff to punitive damages in
4 an amount to be determined at trial.
5

6 **Sixth Cause of Action**
7 Breach of Contract

8 121. Paragraphs 1 through 120 above are incorporated herein by reference as
9 if fully pleaded in this Sixth Cause of Action.

10 122. At all relevant times, WORLD RESORT represented to Plaintiff, in
11 various writings or oral agreement, including but not limited to the, employment
12 contract, that their employment relationship with Plaintiff would be based upon good
13 faith, that Plaintiff would be treated fairly and equitably, that Plaintiff would be judged
14 on the basis of individual merit and ability, that Plaintiff would not be discriminated
15 against, and that Plaintiff would receive just compensation for his services rendered to
16 Defendants. These provisions and representations form part of Plaintiff's
17 employment contract with WORLD RESORT.
18
19

20 123. Prior to Plaintiff's constructive discharge, Plaintiff had performed all
21 conditions, covenants, promises, duties, and responsibilities required of him to be
22 performed in accordance and in conformity with her employment contract with
23 WORLD RESORT.
24
25

1 124. On the date of Plaintiff's discharge, WORLD RESORT breached
2 Plaintiff's employment contract and wrongfully failed to judge Plaintiff on the basis of
3 merit and ability, and wrongfully and without lawful cause terminated Plaintiff as a
4 retaliatory action for filing an EEO complaint against WORLD RESORT.
5

6 125. Based on WORLD RESORT's breach of contract as mentioned above,
7 Plaintiff is entitled to expectation, incidental, and consequential damages in an amount
8 to be determined at trial.
9

10 **Seventh Cause of Action**

11 Breach of Implied Covenant of Good Faith and Fair Dealing

12 126. Paragraphs 1 through 125 are incorporated herein by reference as if fully
13 pleaded in this Seventh Cause of Action.

14 127. The employment contract has implied in law a covenant of good faith
15 and fair dealing by which WORLD RESORT promised to give full cooperation to
16 Plaintiff in his performance under the employment contract and to refrain from any
17 act that would prevent or impede Plaintiff from performing all of the conditions of
18 the agreement.
19

20 128. Defendants breached their implied covenant of good faith and fair
21 dealing with Plaintiff by, among others, wrongfully terminating Plaintiff in retaliation
22 of his filing an EEOC case and for engaging in a protected activity.
23

24 129. As a direct and proximate result of WORLD RESORT's breach of the
25 covenant of good faith and fair dealing, Plaintiff has suffered and continues to suffer

1 substantial losses in earnings and other employee benefits that he would have received
2 had Defendants not breached the agreement, in an amount to be determined at trial.

3 130. As a further proximate result of the above-mentioned acts, Plaintiff has
4 suffered humiliation, mental pain and anguish, all to Plaintiff's damage in an amount
5 to be proven at trial.

6 131. The above-mentioned acts of Defendants were willful, wanton,
7 malicious, and oppressive, and justify an award of punitive and exemplary damages in
8 an amount to be determined at trial.

9
10
11 **Eighth Cause of Action**

12 **Intentional Infliction of Emotional Distress**

13 132. Paragraphs 1 through 131 above are incorporated herein by reference as
14 if fully pleaded in this Eighth Cause of Action.

15 133. Defendants, in committing the above-described acts, intended to and did
16 inflict severe emotional distress upon Plaintiff. Defendants acted with a reckless
17 disregard of the probability of causing emotional distress to Plaintiff.

18 134. As a direct result of the outrageous acts and omissions, conduct, and
19 discrimination, Plaintiff became physically distraught and sustained shock to his
20 nervous system and suffered severe emotional distress, all resulting in damages to his
21 in an amount to be proven at trial.
22
23
24
25

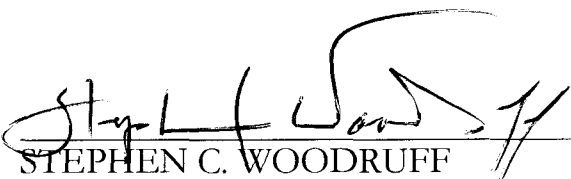
1 135. Defendant engaged in the above-described conduct against Plaintiff with
2 malice and in reckless disregard of Plaintiff's federally-protected rights thereby
3 entitling Plaintiff to punitive damages in an amount to be determined at trial.
4

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff respectfully requests for the following relief:

- 8 (1) An award of punitive damages according to law and proof
9 under the First Cause of Action;
- 10 (2) An award of punitive damages according to law and proof
11 under the Second Cause of Action;
- 12 (3) An award of compensatory and punitive damages according to
13 law and proof under the Third Cause of Action;
- 14 (4) An award of compensatory and punitive damages according to
15 law and proof under the Fourth Cause of Action;
- 16 (5) An award of compensatory and punitive damages according to
17 law and proof under the Fifth Cause of Action;
- 18 (6) An award of expectation, incidental and consequential
19 damages according to law and proof under the Sixth Cause of
20 Action;
- 21 (7) An award of punitive damages and lost earnings according to
22 law and proof under the Seventh Cause of Action;
- 23 (8) An award of punitive damages under the Eight Cause of
24 Action;
- 25 (9) Such other and further relief as this Court deems just and
 proper.

DATED this 4th day of September, 2012.


STEPHEN C. WOODRUFF
Attorney for Plaintiff

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Rogelio Cada
P.O. Box 7797 SVRB
Saipan, MP 96950

From: Honolulu Local Office
300 Ala Moana Blvd
Room 7-127
Honolulu, HI 96850



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

486-2012-00011

Raymond Griffin, Jr.,
Investigator

(808) 541-3721

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

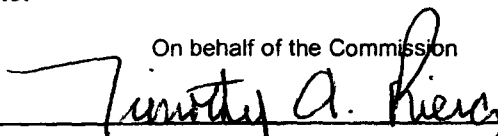
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

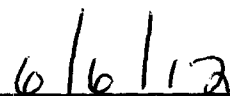
Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Timothy A. Riera,
Director



(Date Mailed)

Enclosures(s)

cc: HANWHA RESORT & HOTEL
DbA Saipan World Resort
c/o Law Offices of Rexford C. Kosack
ATTN: Glenn A. Jewell, Esq.
P.O. Box 500410
Saipan, MP 96950